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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/887,044	06/25/2001	Mei-Li Chuang Chien		7401

7590 08/30/2004
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EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 08/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/887,044	Applicant(s) CHUANG CHIEN ET AL.	
	Examiner Lien T Tran	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 June 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claims 1-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1: Line 3, what does applicant mean by "grains of natural fruit"; also, the phrase "uses the grains of natural fruits" is indefinite because it is not clear what is intended by it. The phrase is a processing step and it is not clear how it is related the filling ingredient; it is suggestion applicant uses language such as "a filling ingredient comprising". Line 5, the phrase "a starch layer is starch" is confusing because it is repetitive; it is suggested applicant uses this language "a starch layer on the filling ingredient"; the term "the outer layer" is confusing because it is not known what outerlayer the claim is referring to. Lines 6-9 are confusing because it is not clear if applicant intends to claim property with the product; the language used is not clear. Limitation such as "a pearl starch ball with filling is composed from the mentioned components" is confusing because the claim already recites the components of the product.

Claim 2 is vague and indefinite; the language "can be grain-shaped and processed five grains" does not positively claims that the filling is grain-shaped and processed five grains. It is not clear what the scope of the claim is. What does applicant mean by "grain-shaped and processed five grains."

Claim 3 has the same problem as claim 2; additionally, the phrase "processed healthy ingredients from Chinese herb medicines" is unclear because it is not known what would considered as such ingredient. The scope of the claim can not be determined.

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Claim 4 has the same problem as claim 1; additionally, what does applicant mean by "grain-shaped fruit jello"?

Claim 5 has the same problem as claim 2.

Claim 6 is vague and indefinite. What does applicant mean by "any mention pearl starch ball product according to claim 1"?; claim 1 only recites one starch ball product.

The use of the terms "can be" has the same problem as claim 2. Line 3, the phrase "respectively from the inside to the outside" is confusing; inside to outside of what? Line 2 recites at least more than two layers; however, lines 4-5 only recite two layers.

In claim 7, the phrase "any mentioned pearl starch ball product" has the same problem as claim 6.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cookbook "Dim Sum".

The cookbook discloses a recipe for wheat starch dough. The dough is made of wheat starch, tapioca starch, salt, oil and water. The dough is made into a wrap for wrapping various fillings. One recipe teaches wrapping a filling comprising shrimp, meat and vegetable in the dough wrap. Another recipe teaches wrapping a filling comprising meat and vegetable.

The product disclosed in the cookbook comprises a filling ingredient and a starch layer on the filling ingredient. It is unclear if the claims are claiming the filling ingredients as recited. The only positively claimed filling ingredient is natural fruits as recited in claim 1. The cookbook does not teach a filling made of fruits.

It would have been obvious to one skilled in the art to put any kind of filling in the dough depending on the taste and flavor wanted. This would have been an obvious matter of preference. For instance, if the product is intended as a dessert dish, it would have been obvious to use a fruit or some kind of sweet filling instead of meat and shrimp filling. Even if all the filling ingredients in claims 2-6 are positively claimed, the claimed product would still not define over the prior art because it would have been obvious to add any kind of filling depending on the taste and flavor desired. It would also have been obvious to use different layers of filling to obtain different taste and flavor. It would also have been obvious to vary the volume of filling material depending on the amount of filling wanted.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Wednesday and Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

August 26, 2004

Lien Tran
LIEN TRAN
PRIMARY EXAMINER
Group 1702